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OFFICE OF PETITIONS

In re Application of :
Kenneth C. Widen :
Application No. 10/701,760 : DECISION ON PETITION
Filed: November 4, 2003 :
Attorney Docket No. M-15290 US :

This is a decision on the communication, filed November 29, 2007, which is being treated as a petition for review of the record for this case and to withdraw the holding of abandonment based on failure to receive the Office action of February 17, 2006.

The petition is **GRANTED**.

The application became abandoned for failure to reply in a timely manner to the Restriction Requirement, mailed February 17, 2006, which set a shortened statutory period for reply of thirty days. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). A Notice of Abandonment was mailed on August 23, 2006.

A review of the record discloses that a first petition to revive under 37 CFR 1.137(b) was filed on September 12, 2006, which contended that no fee is believed due since the February 17, 2006 Office action was never received. The petition was not accompanied by the required evidence of non-receipt. This petition was dismissed in a decision mailed April 20, 2007 since the reply to the outstanding Office action of February 17, 2006 had not been received. This decision further stated that the file record indicated that the Office action of February 17, 2006 was mailed to the address of record and there was no indication that it had been returned to the Office as undeliverable.

The renewed petition of June 11, 2007 was accompanied by the reply to the outstanding Office action of February 17, 2006. Additionally, petitioner, in the renewed petition, again contended that no fee was due since the Office action of February 17, 2006 had never been received, which was not addressed in the

decision granting the petition to revive under 37 CFR 1.137(b) mailed to petitioner on October 30, 2007.

Petitioner now requests a refund of the petition fee and submits for the first time a copy of his docket record to support a showing of non-receipt of the February 17, 2006 Office action.

In reviewing the file record for this application, it is now noted that there are two entries in the Image File Wrapper of an Office action dated February 17, 2006. Neither entry indicates that the Office action was returned as undeliverable, which would tend to indicate that the Office action was scanned into the Image File Wrapper twice and never mailed to the applicant. Therefore, contrary to the statement made in the decision mailed April 20, 2007, it would appear that there was in fact an irregularity in the mailing of the Office action of February 17, 2006. Accordingly, it would be appropriate here to treat the petitions under 37 CFR 1.137(b) as a request to withdraw the holding of abandonment under 37 CFR 1.181(a).


In view of the above, the Notice of Abandonment mailed on August 23, 2006 is vacated and the holding of abandonment withdrawn.

In view of the above, the \$1,500 petition fee submitted on September 12, 2006 will be refunded to petitioner's deposit account in due course.

In the future, petitioner should file the appropriate petition to withdraw the holding of abandonment under 37 CFR 1.181(a) where it is contended that an Office action was never received. Note MPEP Section 711.03(c).

This application is currently before Technology Center AU 2886 for appropriate action on the reply to the February 17, 2006 Office action.

Inquiries concerning this decision may be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions